

**UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF MICHIGAN**

JOHN LOFFREDO, CHARLES ACKER, ALLEN D.  
ADAM, PAUL C. AGNEW, ANDREW A. AGOSTA,  
GIRDHARI L. AGRAWAL, RICHARD L. ALBRECHT,  
STEPHEN A. ALCOCK, GORDON E. ALLARDYCE,  
FLOYD E. ALLEN, SEBASTIAN ARMBRUSTER,  
THOMAS E. ATKINS, ROBERT J. ATWELL, JR.,  
STEPHEN L. AZONI, LAURENCE W. BAKER, DENNIS  
A. BARILE, CLARISSA JANE BARLOW, THEODORE  
K. BARNHART, ERNEST J. BARRY, DAVID J.  
BARTLO, FREDERIK J. BARTZ, ARA E. BASHERIAN,  
WALTER J. BATTLE, JR., DAVID W. BECKNER,  
BERNARD BEDARD, GERALD D. BERGMOSER,  
PAUL I. BERRIGAN, GERALD L. BEVERMAN JOHN  
C. BIRD, WILLIAM S. BISHOP, LOUIS M. BITONTI,  
GREGORY A. BLINDU, LAWRENCE C. BOCZAR,  
RONALD R. BOLTZ, DAVID BONSKY, LARRY  
BOOR, DAVID P. BOSTWICK, SANDRA BOUCKLEY,  
WILSON E. BOUGHTON, WILLIAM BOYD, JAMES J.  
BOZYK, BILLY A. BRICKLES, KEVIN P.  
BRODERICK, NELSON BROOKS, JR., TAYLOR  
BROWN, THOMAS C. BROWN, RICHARD F. BROWN,  
RICHARD E. BROWN, ROGER M. BRUCE, EDWIN H.  
BRUST, MILES G. BRYANT III, DENNIS E. BRYLL,  
KENNETH M. BUCZEK, J. MICHAEL BURKE, DAVID  
W. BUSACCA, CHARLES N. BUSCH, WYN V.  
BUSSMANN, MICHAEL L. BUSTAMANTE, CHARLES  
BUTTS, SUSAN M. BUXTON, EDWARD J. BYRNE,  
JR., JOSEPH CADDELL, JOHN A. CANGIALOSI,  
THOMAS P. CAPO, JOSEPH E. CAPPY, DAVID L.  
CARLSON, TIMOTHY A. CASERTA, GARY W. CASH,  
RICHARD S. CASSLE, FRANCOIS CASTAING,  
FRANK A. CECI, STEPHEN M. CEROVSKY, JEFF  
CHIAPPETTA, JOHN W. CHISOLM, MICHAEL P.  
CICCONE, GERALD CILIBRAISE, ALBERT MICHAEL  
CLEMENT, DEWANE C. COGSWELL, MICHAEL W.  
COLE, ABRAHAM CONTINO, RONALD J.  
CORIROSSI, CHARLOTT L. CORNELL, EDMUND  
MICHAEL COUGHLIN, GUY COWING, ROBERT E.  
COX, RICHARD M. COZART, JOHN E. CRAIN,  
AMERICUS L. CRAWFORD, JAMES L. CRAWFORD,  
GARY R. CRISP, GENE R. CROMBEZ, MICHAEL  
PAUL CRONIN, THEODOR R. CUNNINGHAM,  
JAMES MICHAEL CURRIN, JAMES H. CYPER, RON  
CZAR, CLIFFORD J. DAVIS, DENISON S. DAVIS,

Civil Action No.: \_\_\_\_\_

Removed From:

The Circuit Court for the  
County of Wayne, State of  
Michigan

Docket No. 10-010505-CZ

DARRELL L. DAVIS, THOMAS E. DAVIS, ROBERT L. DAVIS, JOHN R. DAWSON, JR., BRENDA DAY, HENRY B. DECALUWE, FRANK N. DEMAIO, DENNIS DEMERS, MARY ANN DEMSKI, KENNETH E. DEMSKI, TRENT DEVERNA, MICHAEL G. DEYOUB, PIERO DIMAMBRO, GARY R. DIMITRY, BRUCE DONALDSON, JAMES D. DONLON, III, PATRICK J. DONNELLY, WILLIAM P. DONOHUE, RONALD R. DOWELL, JOSEPH M. DUPREE, RICHARD E. EARLE, RICHARD S. ENTENMANN, JOHN A. ERNSTER, CHARLES H. ESCHENBACH, WILLIAM M. ESSER, RICHARD EVERETT, JOHN S. FELICE, EDWIN J. FILBIN, DAVID R. FISCHER, JANE E. FITZGIBBON, DENNIS FITZPATRICK, RONALD A. FLOR, DENNIS E. FLORENCE, JOHN F. FLOYD, JAMES M. FLUTUR, ROBERT J. FORBES, JAMES A. FOREMAN, JIM L. FOSTER, KENNETH R. FRANCESE, FRANK T. FREDERICK, ROBERT G. FULLER, THOMAS C. GALE, THOMAS GALLAGHER, KEVIN R. GALVIN, RONALD J. GARDHOUSE, VINCENT GARRISI, MICHAEL GARSTECKI, STEPHEN GARTH, GREGORY T. GAUDETTE, PHILLIP E. GAVIE, RICHARD O. GEISS, MICHAEL J. GIALDINI, THOMAS GIANNINI, FRANK J. GLASGOW, DONALD L. GLENN, MICHAEL H. GOEDDEKE, RUEVEN GOLAN, LEWIS GOLDFARB, HENRY S. GOLDMAN, MICHAEL S. GONDA, CLINTON J. GRAHAM, JOSEPH A. GRAMLING, STEVE GRAVES, JERRY W. GREELEY, ROGER E. GUETZKOW, THOMAS F. GUIDUGLI, RONALD GURDAK, RICHARD T. GUTOWSKI, JAMES A. HAAS, RANDOLPH N. HAIKO, THOMAS C. HAMILTON, CHARLES B. HAMILTON, LESLIE M. HAMILTON, WILLIAM L. HAMMERS, NORMAN HAMWAY, ROBERT F. HANBA, EDWARD R. HANISH, JOSEPH S. HANNAN, JR., FREDERIC W. HANNERT, DANIEL P. HARDIN, JR., KEITH A. HARRISON, JAMES E. HASELWOOD, JAMES A. HAZZARD, GREGORY DEAN HEARD, WILLIAM L. HEATHCOTE, NORRIS RAY HEDDING, PAUL B. HELLENS, GARY L. HENSON, DONALD R. HERMAN, JAMES JAY HICKEY, GEORGE A. HIGGS, JEFFREY HIGGS, THOMAS HILDEBRANDT, JOSEPH E. HILGER, JOHN P. HINCKLEY, LAWRENCE D. HOENIG, JAMES PATRICK HOLDEN, DANIEL M. HOLLAND, JAMES L. HOLLINGER, JAMES E. HOLTSLAG, ROBERT W. HORNICK, RICHARD J. HOROKY, THOMAS E. HOSKEN, GLEN HOUSE, ANTHONY W. HOWETT, JOSEPH HUBER, MARK

HUBER, ROBERT F. HURLIMAN, WILLIAM  
STANLEY HURST, DAVID E. HYRE, FRED  
HUBACKER, LIDO A. IACOCCA, MYKLE C. JACOBS,  
HARRY K. JAGTIANI, JAMIE JAMESON, PAUL V.  
JOBST, RICHARD C. JOHNSON, KEITH A. JOHNSON,  
SR., GEORGE P. JOHNSON, JR., TOM JOHNSTON,  
GITTA JUDD, JOHN H. KAISER, PRANCISKUS S.  
KAUNELIS, DENNIS KELLY, DAVID W. KEMPKEN,  
PHIL KENNINGHAM, MICHAEL KERBY, WAYNE A.  
KIEB, DAVID M. KIMBALL, WILLIAM R. KISSEL,  
CHARLES B. RITZ, WAYNE KLEMENT, WILLIAM  
KLINGLER, DALE L. KOCH, MICHAEL J. KOLKJEN,  
ZIEVA KONVISSER, LAWRENCE KOWAL, GERALD  
H. KOWALSKI, KENNETH J. KRUPANSKY, RONALD  
P. KRUPITZER, TERRY KRUTZ, ANDREW C.  
KUCHARSKI, ERNEST J. LAGINESS, JR., ALAN  
LAMBERT, WILLIAM LAMOTT, FREDERICK J.  
LAMPHEAR, SANDRA S. LAPADOT, LOREN N. LAU,  
ROBERT M. LAUDICINA, KENNETH J. LAURENCE,  
RONALD LAUX, PING LEE, MARTIN R. LEVINE,  
GREG LEWANDOWSKI, TIMOTHY T. LIBBY,  
LOUISE R. LINDER, TED B. LINDSTROM, MERLE E.  
LISKEY, JOHN LIU, CARLOS LOBO SILVA, JAMES E.  
LODGE, ROBERT P. LONGSTRETH, HERBERT S.  
LUGGER, FRED V. LUSS, MICHAEL LUTSCH, JAMES  
J. LYIYNEN, DAVID LYIYNEN, SUSAN M.  
LYNDEN, M. JOHN MACDONALD, DONALD C.  
MACDONALD, KENNETH S. MACK, DANIEL F.  
MACRAE, TIMOTHY J. MADDEN, ALISA L. MAHER,  
WALTER G. MAHER, RONALD A. MAJESKE, JEAN P.  
MALLEBAY-VACQUEUR, JERRY V. MALLORY,  
GARY MARCHENIA, EUGENE J. MARCINAK,  
THOMAS L. MARTIN, VIRGIL THOMAS MATCZAK,  
OMAR MATT, WILLIAM A. MATTINGLY, RICHARD  
J. MATTON, JAMES MAY, THOMAS CRAIG  
MCLEAR, WILLIAM D. MCALLISTER, ALEX J.  
MCCLOSKEY, IV, JOE W. MCCORMICK, DAN  
MCDAVID, PRUDENCE A. MCINTOSH, KENNETH L.  
MCLAIN, LINDA J. MCLALIN, ERNEST O.  
MC LAUGHLIN, BARTON J. MCLELLAN, DIANA  
MERCER-PRYOR, SALVATORE A. MESSINA, DAVID  
M. MILLER, FRANCIS L. MILLER, JOHN C. MILLER,  
GEORGE B. MILUSH, JR., DONALD MILTZ,  
RICHARD MIZON, GEORGE E. MOCK, JR., JOSEPH S.  
MOLLAHAN, ROGER D. MONFORTON, JR., DENNIS  
P. MONTONE, KENNETH R. MOORE, WILLIAM E.  
MOORE, TERENCE J. MOORE, THOMAS S. MOORE,  
MICHAEL K. MORRISON, WILLIAM MORSTADT,

ROBERT MOSER, JAMES R. MURRAY, RICHARD NAJ, THOMAS L. NALLY, ROBERT A. NEAL, DAVID A. NELSON, RICHARD G. NEPTUNE, JACK R. NICHOLS, JAMES W. NIHLS, WARREN S. NORRID, JR., MICHAEL A. NYKIEL, MARK OKLA, GARY OLSON, MICHAEL M. O'MARA, NILS OMHOLT, JAMES ORI, THOMAS P. O'ROURKE, KATHLEEN M. OSWALD, WAYNE OUELLETTE, HOWARD B. PADGHAM, HAROLD T. PAGE, ROBERT A. PAGE, JAMES J. PALMER, LOUIS B. PANYARD, E.T. PAPPERT, JOE W. PARK, DENNIS. K. PAWLEY, ANTHONY J. PECORARO, GEORGE P. PELLETIER, DONALD E. PENTECOST, JAMES PERAINO, JAMES A. PETER, ROLAND PETERSDORF, RICHARD PETERSON, MICHAEL D. PHILLIPS, GERALD T. PIASKOWSKI, LINO J. PIEDRA, RONALD J. POMAVILLE, CLARE B. POREMSKY, FREDERICK J. PRICE, BARBARA L. PUTNAM, KENNETH L. QUINT, FRANK P. RAMACCIATO, WALTER D. RAMSEY, LAWRENCE I. RANKA, JON RASBACH, RICHARD RAY, DENNIS N. RENNEKER, SALLIE LOU RHOADS, ANTHONY P. RICHARDS, JAMES W. RICKERT, GORDON L. RINSCHLER, BERNARD ROBERTSON, JAMES BAILEY ROBERTSON, DAVID A. ROBISON, PETER T. ROCK, ELAINE M. ROGUZ, FRED ROLLINS, DENIS R. ROOT, ROBERT F. ROUSH, DEBRA ROWE, RICHARD J. RUDY, ROGER D. RUGGIERO, JON L. RUNDELS, JOHN D. RUSSELL, LAWRENCE E. RYBACKI, GARY A. SALACH, VINCENT P. SAMMUT, FRANK I. SANDERS, THOMAS V. SANTORO, JR., RALPH A. SAROTTE, JAMES L. SAUTER, RONALD A. SAVAGE, JOSEPH M. SCALLISI, SHERWOOD A. SCHARTNER, RICHARD O. SCHAUM, JAMES CRAIG SCHOENFELDER, THOMAS L. SCHUSTER, WILLIAM SCHWANKI, DAREL L. SEAT, CHARLES K. SESTOK III, ANTHONY S. SGARLATA, LAWRENCE WILLIAM SHARER, ROGER C. SHULZE, MARTIN R. SIEGAL, CHESTER D. SKAZYPEK, THOMAS C. SLANEC, FRANK L. SLAUGHTER, JR., ALBERT J. SLECHTER, RAYMONE SLYWKA, CLIFFORD A. SMITH, ROY THEOTIS SMITH, ROBERT W. SMITH, RONALD B. SMITH, NANCY J. SMITH, PATRICK R. SMORRA, PAUL G. SMUTS, D WAYNE SNYDER, JAMES A. SORENSEN, HENRY G. SPELLMAN, ALAN SPENSER, SUSAN STALLARD, THOMAS T. STALLKAMP, DAVID B. STANDEN, JACK M. STANLEY, JOHN STONE, MARVIN F. STRACH, JAMES W.

STRAUSAUH, ALBERT C. STRICKLAND, JR.,  
THOMAS C. STURGEON, RICHARD J. SULLIVAN,  
STANLEY C. SURRAST, BERNARD EDMUND  
SWANSON, STEVEN L. TAFLINGER, JAMES E.  
TATGE, RICHARD C. TAYLOR, KENNETH W.  
TEAGUE, GEORGE H. TELFER, DAVID THOMAS,  
JACK EDWIN THOMPSON, JAMES M. TOGER,  
KENNETH P. TOMASZEWSKI, WILLIAM TRACY,  
THOMAS TREMONT, PAUL JEFFREY TRIMMER,  
ANTHONY J. TROVATO, JAMES J. TYLER, JR.,  
JAMES H. UNTIEDT, RICHARD P. URBAN, RONALD  
J. USTRUCK, PASQUALE VANNUCCI, RICHARD A.  
VARCONDA, EARL J. VOGEL, EUGENE F.  
VOLLMER, GERALD S. VOTTA, JAMES C. WAGNER,  
KENNETH NEIL WALLING, HUGH WALLING,  
DWIGHT R. WASHINGTON, DAVID A. WATT, SR.,  
GERALD A. WAYMAN, BRUCE WEBSTER, JOHN P.  
WEHRLY, MICHAEL D. WHITE, ROBERT C. WHITE,  
MICHAEL C. WHITNEY, DAVID WILD, GEORGE S.  
WILKINS, LARRY EUGENE WILLIAMS, ROBERT M.  
WILLIAMS, W.R. WILLIAMS III, THOMAS C.  
WILLOUGHBY, DARRELL CRAIG WINN, RICHARD  
A. WINTER, JON J. WIOSKOWSKI, JAMES WISE,  
GERALD WIST, WILLIAM M. WITT, LESTER H.  
WOLF, JEFF WOLOSHEN, THOMAS E.  
WOODERSON, MOID L. WOODWARD, JEFFREY C.  
WRIGHT, DENNIS ZEIGER, COLLEEN ZEMATIS,  
WILLIAM C. ZEPPE, JR., DAVID R. ZIMMER, EDWIN  
C. ZIMMERMANN, individually and as representatives of  
a class of similarly situated persons,

Plaintiffs,

vs.

DAIMLER AG, a foreign corporation,  
STATE STREET BANK AND TRUST COMPANY,  
a Massachusetts Trust Company,  
DIETER ZETSCHE, an individual,  
THOMAS LASORDA, an individual,  
JOHN DOE and MARY ROE, individuals,

Defendants.

**DAIMLER AG'S NOTICE OF REMOVAL**

TO: CLERK OF THE COURT  
Third Judicial Circuit Court  
2 Woodward Ave  
Detroit, MI 48226

COUNSEL FOR PLAINTIFF  
Morganroth & Morganroth PLC  
344 N. Old Woodward Avenue, Suite 200  
Birmingham, MI 48009

Sheldon L. Miller  
Law Offices of Sheldon L. Miller  
31731 Northwestern Highway,  
Ste 280W  
Farmington Hills, MI 48334  
(248) 538-3400

Defendant Daimler AG (“Daimler”) by its attorneys, Dickinson Wright PLLC, hereby removes this action from the Circuit Court for the County of Wayne, State of Michigan, where it is currently pending, to the United States District Court for the Eastern District of Michigan, Southern Division.

In support of its Notice of Removal, Daimler states as follows:

1. On or about September 10, 2010, Plaintiffs John Loffredo, *et al.* (“Plaintiffs”) instituted an action in the Circuit Court for the County of Wayne, State of Michigan, Docket Number 10-010505-CZ, by the filing of a complaint (the “State Court Complaint”) against Daimler and other defendants.
2. The Wayne County Circuit Court is located in the Eastern District of Michigan, Southern Division.
3. The State Court Complaint and Summons (attached hereto as Exhibit A) constitute all process, pleadings and orders received by Daimler in this action.
4. This Notice of Removal is timely under 28 U.S.C. § 1446(b) because it is filed within the thirty-day period allowed for removal by statute. Daimler has not yet been properly served with process, and therefore the removal period has not yet begun to run. *See Murphy*

*Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999). In any event, however, this Notice of Removal is filed within thirty days of receipt of the ineffective service. By filing this Notice of Removal, Daimler does not waive and expressly reserves its rights to object to the sufficiency of service and the jurisdiction of the Court over it. *See Ditkof v. Owens-Illinois, Inc.*, 114 F.R.D. 104, 105 (E.D. Mich. 1987) (removal does not waive any defense, including objections to service of process).

5. In the State Court Complaint, Plaintiffs allege that they were participants and beneficiaries under a retirement plan and seek to recover benefits due to them, enforce their rights, and clarify their rights to future benefits under the terms of such plan. The plan, and Plaintiffs' state-law based allegations, are expressly governed by the Employee Retirement Income Security Act ("ERISA"). Plaintiffs' claims are completely preempted by and governed by sections 502 and 514 of ERISA, 29 U.S.C. §§ 1132 and 1144.

7. This action is thus properly removable under 28 U.S.C. §§ 1441(a) and (b) because the United States District Court has original jurisdiction over this ERISA action pursuant to 28 U.S.C. § 1331. *See Metro. Life Ins. Co v. Taylor*, 481 U.S. 58, 62-63 (1987) (removal of state law claims that are completely preempted by ERISA is proper); *accord Aetna Health Inc. v. Davila*, 542 U.S. 200, 221 (2004).

8. To the extent that not all of the claims alleged in the State Court Complaint are determined to be completely preempted by ERISA, this Court possesses supplemental jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1337 because they are part of the same case or controversy as the completely preempted claims. *See Smith v. Provident Bank*, 170 F.3d 609, 613–14 (6th Cir. 1999) (supplemental jurisdiction over related causes of action is appropriate where even one of the claims asserted is preempted by ERISA).

9. In addition, the pending action is removable pursuant to the Class Action Fairness Act (“CAFA”) because it is a class action with more than 450 named plaintiffs in the class, the amount in controversy exceeds \$5 million (exclusive of interest and costs), and as a corporate entity (an *aktiengesellschaft*) organized under the laws of a foreign state, Daimler is diverse from at least one of the named plaintiffs.

- a) Although Plaintiffs do not specify in the State Court Complaint the amount of damages sought, the number of named plaintiffs in the action suggests that it is more likely than not that the amount in controversy exceeds \$5 million. *Everett v. Verizon Wireless, Inc.*, 460 F.3d 818, 822 (6th Cir. 2002) (a removing party need only show that it is more likely than not that the amount in controversy exceeds the statutory minimum). Many of the named plaintiffs filed proofs of claim in the Chrysler bankruptcy for the value of the same lost pension benefits they seek to recover in the State Court Complaint. Certain of those proofs of claim individually allege losses in excess of \$5 million. In the aggregate, the proofs of claim filed by named plaintiffs far exceed \$5 million. It is therefore more likely than not that Plaintiffs’ claims will exceed the minimum amount-in-controversy under CAFA.
- b) The only defendant named in the State Court Complaint who is a citizen of the State of Michigan is not a defendant from whom significant relief is sought, nor does the defendant’s conduct form a significant basis for the claims asserted in the State Court Complaint.

10. This action is thus properly removable under 28 U.S.C. §§ 1441(a), 1441(b), and 1453 because the United States District Court has original jurisdiction over this class action pursuant to 28 U.S.C. § 1332(d).

11. Service and notice of the filing of this Notice of Removal will be given to all adverse parties and a true and correct copy of the Notice of Removal will be filed with the Clerk of the Court for the County of Wayne, State of Michigan, as provided by law.

12. Defendant Thomas LaSorda, the only defendant that has been served with the State Court Complaint, consents to this Notice of Removal. Defendant State Street Bank and Trust Company, which has not yet been served with the State Court Complaint, consents to this Notice of Removal. Defendant Dieter Zetsche, who contends that he has not been properly served with the State Court Complaint, also consents to this Notice of Removal, but in so doing does not appear in this action and reserves all of his rights to object to the sufficiency of service upon him and the jurisdiction of the Court over him.

Date: October 19, 2010

Respectfully submitted,

DICKINSON WRIGHT PLLC

By: /s/ L. Pahl Zinn  
L. Pahl Zinn (P57516)  
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*Attorneys for Defendant Daimler AG*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of Civil Cover Sheet, Daimler AG's Notice of Removal and Certificate of Service was served upon all parties and/or attorneys of record to the above cause herein at their respective street addresses as disclosed on the pleadings and/or their respective email addresses and/or their respective facsimile numbers on: October 19, 2010, via:

U. S. Mail       Facsimile  
 Overnight Courier       Hand Delivery  
 Email       Federal Express

I declare under penalty of perjury that the statement above is true to be best of my information, knowledge and belief.

/s/ Joyce A. Ford

Joyce A. Ford

DETROIT 40340-1 1169751